

- The issues raised by respondent in its Request for Review and its briefs to the Appeals Board (Board) include the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary file and for the purposes of preliminary hearing, the Board finds the Preliminary Decision of the Administrative Law Judge should be modified to grant claimant medical benefits for her right upper extremity for the injuries suffered while employed with respondent.

Claimant, who performed computer input for respondent, worked in that office for approximately four years. According to her testimony, she began developing hand problems in July of 2003 while typing. Claimant initially testified to having problems in her right upper extremity and sought treatment with Providence Medical Center (Providence) for her hand difficulties. The medical reports, admitted at preliminary hearing and marked Respondent's Exhibit A, detail claimant's treatment through Providence on July 31, 2003. The examination, tests and treatment, according to the records from Providence, are limited to claimant's right upper extremity, including both the wrist and the elbow. Claimant described shooting pains from the wrist into the elbow, with numbness and tingling in the right upper extremity. There is no indication in the Providence records that any examination or treatment was provided to claimant's left upper extremity.

Claimant continued working for respondent until approximately the end of July 2003, at which time the business closed. As noted in the Preliminary Decision, claimant advised her supervisors of her difficulties prior to seeking medical care.

After respondent's business closed, claimant stayed home with her young son for approximately 11 months. She testified that her upper extremities improved somewhat, but never completely healed. It is noted throughout the transcript that there is some confusion regarding whether claimant's difficulties occurred to her bilateral upper extremities or the right upper extremity only. Claimant's initial testimony identified the right upper extremity only, with her attorney, during questioning, then modifying it to include the word "hands" plural. Claimant later testified that she had ongoing difficulties with her upper extremities plural, but does not define the time frame during which those difficulties occurred.

Approximately 11 months after respondent's business closed, claimant obtained employment with a new employer identified as Hartehanks. Claimant testified that at Hartehanks, she does the same type of activities as she did with respondent, answering the telephone and inputting computer information as she talks on the telephone. Claimant described it as being the same work. Claimant's testimony indicates that her hand condition has not noticeably worsened while working at Hartehanks. She has missed no work at Hartehanks. There was some indication she may have missed some work while employed with respondent, but the number of days and the time frame involved were never clarified in the record.

Claimant was referred by her attorney to Lynn D. Ketchum, M.D., a specialist in hand surgery and a fellow of the American Academy of Disability Evaluating Physicians. The history provided Dr. Ketchum, as detailed in his November 22, 2004 report, is somewhat contrary to the history contained in claimant's testimony and in the Providence medical records. Dr. Ketchum's history indicates claimant began having bilateral difficulties in her hands, wrists and elbows in late 2002. There is no testimony in the record that claimant had difficulties in 2002, nor was there any indication she sought medical treatment at any time in that year. Additionally, Dr. Ketchum's history indicated that claimant's problems continued to progress, but does indicate that, when she stopped working in July of 2003, she obtained some mild benefit.

Dr. Ketchum's history also notes claimant obtained new employment with Hartehanks, but indicates her duties involve answering telephones and questions for Maytag and "she does some typing." Claimant's testimony was that her typing responsibilities for her current employer are the same as that for respondent.

Dr. Ketchum's examination uncovered bilateral numbness and tingling at the base of both thumbs, with pain over the A1 pulley of the right first and second digits and the left third digit, indicating stenosing tenosynovitis. Both Phalen's and Tinel's were positive bilaterally, with two point discrimination abnormal in the median nerve distribution of the right hand. Dr. Ketchum diagnosed classic overuse syndrome for both upper extremities, recommending that claimant have job modification by substantially reducing her typing. He went on to state that in the job she currently holds, she does "a lot less typing than she did when she was [sic] at TeleTech."

Dr. Ketchum went on to recommend triamcinolone injections in and around the A1 pulleys of the right first and second digits and the left third digit.

In workers compensation litigation, it is the claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.¹ In this instance, claimant's testimony, prior to the prompting by her attorney, elicited an indication that she was having difficulties with her right upper extremity while employed with respondent. The medical records, including all of the tests performed at Providence, deal with the right upper extremity only, with no indication that there were complaints to the left upper extremity nor were there any tests performed on the left upper extremity. It was not until claimant had returned to work at Hartehanks for a period of several months that any medical records indicate any left upper extremity difficulties.

While the Board notes that Dr. Ketchum's recommendation is for treatment to the bilateral upper extremities, it is of significance that Dr. Ketchum's history is in conflict not

¹ K.S.A. 44-501 and K.S.A. 2003 Supp. 44-508(g).

only with the medical records from Providence, but also with claimant's testimony at the preliminary hearing. The Board, therefore, finds that claimant has proven by a preponderance of the credible evidence that she suffered accidental injury arising out of and in the course of her employment with respondent to her right upper extremity, but has failed to prove any connection between her left upper extremity and her job duties with respondent or the treatment provided with Providence.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the February 7, 2005 Preliminary Decision of Administrative Law Judge Robert H. Foerschler should be, and is hereby, modified to grant claimant conservative care with Lynn D. Ketchum, M.D., for the right upper extremity for the conditions and injuries suffered while employed with respondent.

IT IS SO ORDERED.

Dated this ____ day of May 2005.

BOARD MEMBER

c: Elaine M. Eppright, Attorney for Claimant
Tracy M. Vetter, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director